

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 23, 2016 at 1:30 p.m.

1. [16-23802-E-13](#) ADRIAN PEREZ
ETL-1

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-28-16 [17]**

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 1, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

The Motion for Relief from the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real

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property commonly known as 3032 Funston Drive, Sacramento, California (the “Property”). Movant has provided the Declaration of Crystal Massey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Crystal Massey Declaration states that there is one (1) post-petition default in the payments on the obligation secured by the Property, with a total of \$1,236.33 in post-petition payments past due. The Declaration also provides evidence that there are thirty-two (32) pre-petition payments in default, with a pre-petition arrearage of \$40,598.31.

The Crystal Massey Declaration lists five Chapter 13 bankruptcy cases—including the current one—commenced by Debtor, either individually or jointly, since March 14, 2012 that affect Movant’s interest in the Property. Those cases are:

1. Case No. 12-24968
 - a. Filed: March 14, 2012
 - b. Type: Chapter 13
 - c. Date of Dismissal: April 2, 2012
 - d. Reason for Dismissal: Failure to timely file documents. Case No. 12-24968, Dckt. 15.
2. Case No. 12-28151
 - a. Filed: April 27, 2012
 - b. Type: Chapter 13
 - c. Date of Dismissal: May 15, 2012
 - d. Reason for Dismissal: Failure to timely file documents. Case No. 12-28151, Dckt. 11.
3. Case No. 12-32916
 - a. Filed: July 12, 2012
 - b. Type: Chapter 13
 - c. Date of Dismissal: July 30, 2012
 - d. Reason for Dismissal: Failure to timely file documents. Case No 12-32916, Dckt. 12.
4. Case No. 16-20085
 - a. Filed: January 8, 2016
 - b. Type: Chapter 13
 - c. Date of Dismissal: April 3, 2016
 - d. Reasons for Dismissal:
 - (1) Failure to appear at continued meeting of creditors,
 - (2) Failure to file a Certificate of Completion from an approved nonprofit budget and credit counseling agency,

- (3) Failure to provide Trustee with a Class 1 Checklist and Authorization to Release Information,
- (4) Failure to provide Trustee with copies of payment advices or other evidence of income received within the sixty (60)-day period prior to filing,
- (5) Failure to provide Trustee with a copy of tax returns for the most recent tax year that a tax return was filed,
- (6) Failure to file, set for hearing, and serve a motion to confirm the Chapter 13 plan, and
- (7) Failure to amend the Statement of Financial Affairs to list all income received in the years 2014, 2015, and 2016 to date, and to amend Schedule H to list debts pertaining to co-debtor Guillermina Perez. Case No. 16-20085, Dckt. 31.

5. Case No. 16-23802

- a. Filed: June 13, 2016
- b. Type: Chapter 13
- c. Instant Case
- d. Order to Show Cause - Failure to Pay Fees
 - (1) Issued on August 17, 2016

RESPONSE TO MOTION

A response has been filed by David Cusick (“Trustee”) asserting that Trustee’s Objection to Confirmation is scheduled to be heard on August 30, 2016, and that Trustee’s Motion to Dismiss is scheduled to be heard on September 7, 2016.

RULING

The value of the Property is determined to be \$240,000.00, as stated in Schedule A filed by Debtor.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant’s claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for “cause” pursuant to 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(4) allows the court to grant relief from the automatic stay when the court finds that the petition was filed as part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect

to the subject property. Debtor, either individually or jointly, has filed for bankruptcy five (5) times since 2012, including the present filing. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

This pattern is only further highlighted by the fact that the Clerk of the Court has issued an Order to Show Cause as to the Debtor's failure to pay fees. The Debtor's prior four bankruptcies were all dismissed on procedural grounds for the Debtor's failure to comply with even the most basic duties, including failing to file necessary documents, such as schedules. Once again, it appears that the Debtor is failing to comply with the necessary requirements for filing a Chapter 13 nor that the Debtor has any intention of prosecuting the instant case in good faith.

The court shall issue a minute order terminating and vacating the automatic stay to allow Movant, and its agents, representatives, and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A. ("Movant"), its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 3032 Funston Drive, Sacramento, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the automatic stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two (2) years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement

provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.